CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Chatterjee.

1909
Nov. 30.

SHEIKH NASUR
v.
EMPEROR.*

Penal Code (Act XLV of 1860) s. 186—Voluntarily obstructing Public Servants in the discharge of their public functions—Releasing property attached by Civil Court peons under distress warrants issued under the Public Demands Recovery Act (Beng. I of 1895) and the Village Chaukidari Act (Beng. VI of 1870) s. 45—Legality of Warrant—Omission to specify date of extension on the face of it—Civil Procedure Code (Act V of 1908) Order XXI, Rule 24 (2) —Execution by person not named in the warrant—Delegation of powers by Nazir.

A distress warrant issued under the Public Demands Recovery Act which has been extended beyond the original date of return, but does not bear on the face of it the altered date, is not a legal warrant under Order XXI, rule 24 (2) of the Civil Procedure Code.

A warrant under section 45 of the Village Chaukidari Act must contain the name of the person charged with the execution thereof, and cannot be legally executed by any other person delegated by the former for that purpose.

Where the accused released certain buffaloes attached by the Civil Court peons, on the 2nd August, under two warrants addressed to the nazir, but endorsed by him to them, the one issued under the Public Demands Recovery Act, which was originally returnable by the 26th July but had been extended to the 8th August, without the alteration of the date appearing thereon, and the other under section 45 of the Village Chaukidari Act directed to the nazir but without naming any person therein as charged with the execution of it :—

Held, that they were not guilty of an offence under section 186 of the Penal Code, as the peons were not lawfully executing the warrants.

A WARRANT was issued on the 29th June 1909 by Moulvi Abdus Samad, Deputy Collector and Magistrate of Gaya, acting as a Certificate Officer, under the Public Demands Recovery Act (Bengal I of 1895), for the realization of arrears of cesses by the attachment of the moveables of one Jumlo Bibi and others. It was originally made returnable by the 26th July, but it appeared from an order recorded in the order sheet that the Certificate Officer had, on the application of the nazir to

* Criminal Revision No. 1264 of 1909, against the order of R. S. Greenshields, District Magistrate of Gaya, dated Oct. 12, 1909.

whom it was addressed for execution, on the 23rd July, extended the date of return to the 8th August. The warrant, however, did not contain on the face of it the altered date, and there was nothing to show that the accused knew of the extension. A second warrant was issued by the same Officer as a Magistrate under section 45 of the Village Chaukidari Act (Beng. VI of 1870), returnable on the 12th August, for realization of chaukidari salaries by attachment of the moveables of Durga Lal, *sir-panch*, in the first instance, and then of Abdul Aziz Khan and other *panches*. Both the warrants were sent to the same nazir for execution, but he endorsed them to certain Civil Court peons by name. The name of the person charged with the execution of the warrant under the Chaukidari Act was not, however, specified therein. The peons went with the warrants to the village of Jumlo Bibi and Abdul Aziz and attached certain buffaloes belonging to them on the 2nd August. The petitioners, who were the *gomasta* and *barahil* of the debtors, thereupon went up to the peons, as they were removing the buffaloes, and released them.

They were tried and convicted by Babu G. K. Ghosh Chowdhry, Second Class Magistrate of Gaya, under section 186 of the Penal Code, and sentenced, on the 6th October, to four months' rigorous imprisonment and to fines of Rs. 50 each. An appeal from the said conviction and sentence was dismissed on the 12th by the District Magistrate who, however, reduced the sentences.

The petitioners then obtained a Rule from the High Court to set aside the proceedings on the grounds that the resistance to the execution was after the date specified in the first warrant, and that the resistance, if any, in respect of the second warrant was not to the person named therein as charged with its execution.

Mr. Ahmad (with him *Moulvi Mahomed Karim*), for the petitioners. The first warrant was time-expired on the face of it. It was, no doubt, extended to the 8th August, but the extended date was not mentioned in it. Refers to the Civil Procedure Code, section 148, and Order XXI, rule 24 (2). As to the

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second warrant, section 45 of the Village Chaukidari Act requires execution of it by the person named therein and does not permit delegation to others.

Mr. Monnier, for the Crown. The first warrant was a live warrant on the date of its execution, though the alteration and extension of the date of return did not appear on the face of it. The peons were, therefore, *in fact* acting in the lawful discharge of their public functions. In *Anand Lall Bera* v. *Empress* (1) the warrant had actually expired when it was put in execution. In *Abinash Chandra Aditya* v. *Ananda Chandra Pal* (2) the date of return of the warrant had been extended, but it is expressly mentioned in the judgment that notice of the later date was not given to the officer in charge of its execution. This case is, therefore, also distinguishable, as in the present instance the extension was made on the application of the same nazir to whom it was directed for execution. The nazir could himself have executed the warrant, and his knowledge of the fact of extension would in law be the knowledge of the peons to whom he had lawfully endorsed the warrant. The omission of the altered date in the warrant itself might be irregular under Order XXI, rule 24 (2), but it would not render a warrant, which was actually in force, time expired, or invalidate it so as to affect the culpability of the accused under section 186 of the Penal Code, inasmuch as the object of the warrant is only to inform the judgment-debtor of the decretal amount and costs : *Emperor* v. *Ganeshi Lal* (3) and *Empress* v. *Amar Nath* (4). The judgment-debtor is only concerned with the amount of his liability and not with the authority of the process server. As to the other warrant, it is true that section 45 of the Village Chaukidari Act requires the name of the person entrusted with its execution to be mentioned, but a nazir has always been recognized as the proper officer for the execution of processes in the mofussil in India, and his power of delegation of his functions in this respect to peons, by endorsement on the warrant, dates from

(1) (1883) I. L. R. 10 Calc. 18.
(2) (1904) I. L. R. 31 Calc. 424, 426.
(3) (1904) I. L. R. 27 All. 258, 259.
(4) (1883) I. L. R. 5 All. 318.

1793: *Dharam Chand Lal* v. *Queen-Empress* (1), followed in *Sheo Progash Tewari* v. *Bhoop Narain Prosad Pathak* (2). The Legislature in enacting section 45 must be taken to have contemplated this power of delegation in the case of a nazir. This section was not intended to deprive him of his general powers in this respect, and must be read consistently with the same. Besides, it would be impossible in many cases for the nazir to execute personally all warrants addressed to him under the section. Under the English Law a person whose property is seized is entitled to know the authority under which it is done, but the matter is not to be decided in accordance with English Law and precedents: *Dharam Chand Lal* v. *Queen-Empress* (1).

HARINGTON AND CHATTERJEE JJ. This is a Rule calling upon the District Magistrate to show cause why the conviction and sentence mentioned in the petition should not be set aside or such other order passed, as the circumstances may require, on the ground that the resistance was after the date specified in the first process, and on the further ground that the resistance, if any, in respect of the second process, was not to the person named therein as charged with the execution of the process.

The petitioners have been convicted under section 186 of the Indian Penal Code. They appealed to the District Magistrate, and the sentence passed on them was reduced to one month's rigorous imprisonment. They now ask that the conviction may be set aside on the grounds upon which the Rule was granted.

Now, the resistance was made to the execution of two different warrants, one under the Public Demands Recovery Act and the other under the Chaukidari Act. With respect to the former warrant, the ground taken by the petitioners is that, whereas it appears on the face of it that the returnable date of the warrant was July 26th, the resistance was not in fact

(1) (1895) I. L. R. 22 Calc. 596, 605, 607.

(2) (1895) I. L. R. 22 Calc. 759.

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offered by the prisoners until August 2nd. It is urged on behalf of the petitioners that, as the warrant could only be executed on or before the 26th July, there was nothing illegal in resisting its execution when the time during which it could lawfully be executed had expired. The reply made by the Crown is that in fact the warrant had been extended until August 8th. Therefore the resistance was unlawful, because the warrant could be lawfully executed on August 2nd. Order XXI, rule 24, contains the provision as to what must appear on the process for execution, and, amongst other things, it is provided that in every such process the day shall be specified on or before which it shall be executed. It was, therefore, material that the warrant should bear a date on or before which it could be executed. Now, assuming that this warrant had been extended to August 8th, that date did not appear on the warrant. Therefore the warrant failed in an essential particular, and was at the time of the resistance, on the face of it, not a good warrant. That being so, we think the prisoners could not be convicted of voluntarily obstructing a public servant in the discharge of his public functions, because the discharge of the public function was the execution of a warrant, and the warrant at the time failed to show that it could be executed at the time when the resistance was offered to the public servant.

Further, in our view, the persons against whom the warrant was sought to be executed were entitled to see the warrant not only for the purpose of satisfying themselves as to the amount, but also for the purpose of satisfying themselves that the person who sought to execute the warrant against them was legally authorized so to do. When the warrant on the face of it did not confer that authority to the person who sought to execute it, we cannot see how the persons who resisted the execution can be convicted under section 186.

Then with regard to the second point the question is perhaps one of greater nicety. The warrant was issued under section 45 of the Chaukidari Act. The point taken is that under that section the person who is to execute a warrant

must be named in it, and the warrant could only be executed by the person so named. In this case the warrant did not specify the name of the person who was to execute it, and it was not executed by the person to whom it was directed. In answer it is contended for the Crown that the warrant was directed to the naib-nazir, and he, by the practice, which has obtained for many years in this country, had general power to delegate the execution of processes to his subordinates. Therefore the warrant which was executed by a peon subordinate to the naib-nazir was being lawfully executed when the petitioner resisted the execution.

The words of section 45 of the Chaukidari Act run as follows, with regard to the particular issue of the warrant: "The District Magistrate may issue his warrant for the realization of the chaukidar's pay from the members of the panchayat by distress and sale of their moveable property, and shall therein charge some person, therein named, with the execution thereof; and upon such warrant such proceedings shall be had as hereinbefore directed to be had on any writing issued for the recovery of any arrears of the tax by this Act directed to be levied."

Now, on the best consideration that we can give to the words of that section, we are of opinion that the warrant issued under that section must contain the name of the person who is to execute it, and that only the person who is named in the warrant as charged with execution can lawfully execute the warrant. The words in our view are sufficiently stringent to override any general power of delegation which a naib-nazir might have in cases in which his power has not been specifically limited by statute.

For these reasons, we think the petitioners could not be convicted under section 186 of resisting a peon in the execution of the warrant issued under section 45 of the Chaukidari Act. The result is, that the Rule must be made absolute, the conviction and sentence set aside, and the petitioners, if on bail, must be directed to be released from their recognizances.

E. H. M. *Rule absolute.*